

- Society of Professional Journalists, Hawai'i Chapter League of Women Voters of Hawai'i
  - Right To Know Committee Big Island Press Club Hawai'i Pro-Democracy Initiative
    - Open Government Coalition of Hawaii
       Honolulu Community-Media Council
       Citizen Voice
       Kauaians for Open Government
       SPJ UH Chapter

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March 14, 2006

#### News Release

## 2006 Freedom of Information Compliance Audit

Ten community organizations today released the first Freedom of Information Audit of Hawai'i government records.

Thirty-three volunteers – mostly from the League of Women Voters – fanned out in February across the state to request records that are unquestionably public records and should be released to a requestor upon request.

What they found was a pattern of defensiveness and reluctance.

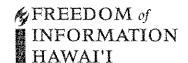
Compliance was pretty good as 43 of 59 record requests were met. But it took persistence by the volunteers. Only 17 of the 59 record requests were fulfilled on the first visit.

We wanted to make two points:

- Private citizens should not be required to come back when they are asking for public records. There is little excuse for not releasing records on the spot. Chances are that many will not return because of time or other constraints.
- Government agencies should stop asking why people want to see records and should refrain from requiring identification from those seeking records.

Sponsors of the audit are: Society of Professional Journalists—Hawai'i Chapter, League of Women Voters of Hawai'i, Right to Know Committee, Honolulu Community-Media Council, Big Island Press Club, Kauaians for Open Government, Hawai'i Pro-Democracy Initiative, Citizen Voice, SPJ University of Hawai'i Chapter, and Open Government Coalition of Hawai'i.

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# Report on Results of the 2006 Freedom of Information Compliance Audit

Since 1998, Society of Professional Journalists chapters have conducted FOI Audits in over 25 states around the county (http://foi.missouri.edu/openrecseries/). These FOI audits assess the degree to which state and local governments comply with open records laws, and help promote public awareness of freedom of information issues.

Last month, the first FOI Audit was conducted in Hawai'i. Ten organizations sponsored the Hawai'i FOI Audit, including the Society of Professional Journalists—Hawai'i Chapter, League of Women Voters of Hawai'i, Right to Know Committee, Honolulu Community-Media Council, Big Island Press Club, Kauaians for Open Government, Hawai'i Pro-Democracy Initiative, Citizen Voice, SPJ University of Hawai'i Chapter, and Open Government Coalition of Hawai'i.

Co-chairs of the 2006 Hawai'i FOI Audit are Beverly Keever, Right to Know Committee chair, and Stirling Morita, SPJ Hawai'i FOI chair. The FOI Audit was scheduled to coincide with national Sunshine Week and the Annual FOI Day Luncheon. Public awareness about the audit is also intended to build support for open government bills at the Legislature.

Instead of having journalists make FOI records requests like most mainland FOI Audits, the Hawai'i audit utilized citizen volunteers to avoid having agencies give journalists favorable treatment. The League of Women Voters helped recruit volunteers to submit FOI record requests. There were 33 volunteers; 14 on Oahu and 19 on the neighbor islands. FOI record requests were submitted by audit volunteers over 9 business days, starting on February 7.

#### THE RESULTS

A total of 59 record requests were submitted in this audit; 43 requests were fulfilled and 16 not fulfilled. Two of those unfulfilled requests were granted viewing only, but requests to copy those same records were denied. Of 43 requests fulfilled, 17 were fulfilled on first contact with the agency, 11 on the second, and 15 on three or more contacts.

Record requests were made to 25 state agencies and 34 county agencies. County record requests included 13 on Kaua'i, 8 on O'ahu, 5 on Maui, and 8 on Hawai'i, with 6

in Hilo and 2 in Kona. The 16 unfulfilled requests included 4 at state agencies and 12 at county agencies.

The records selected for this audit were suggested by the Society of Professional Journalists—Hawai'i Chapter. The types of open government records included: travel expenses, personnel lists, non-bid contracts, consultant contracts, office space and land leases, legal settlements, legal services, criminal information, and restaurant inspection reports.

## WHY DO YOU WANT TO SEE THE RECORDS?

One third of the FOI requests in the audit — 19 record requests — involved volunteers being asked why they wanted the record. When this question is posed, it could have a chilling effect on citizens making FOI requests, even if asked in friendly conversation. If an agency required the information before releasing a record, the question would be improper. Among record types, agency personnel records had the highest rate of staff asking requesters both their purpose and identity, 7 out of the 8 requests.

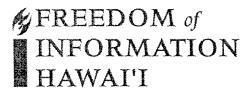
Providing one's identity can often make it easier to implement a records request, as was likely in most of the 39 times agencies asked requesters in this audit. But agencies should also respect the rights of citizens who may wish to maintain anonymity in FOI requests. Exercising citizen access rights to government records should not be hindered by any requirements, implied or otherwise, not required by law.

## IT TAKES PERSISTENCE

In the audit, 17 record requests were fulfilled on the first contact with the agency. However, 35 or 60% of all FOI requests required one or more follow-up contacts to pursue release of public documents. Among the 59 record requests attempted, there were 25 instances in which volunteers were unable to submit their request on the first contact. In 32 of the requests, front desk agency staff were not able to handle FOI requests without the assistance or approval of their supervisor.

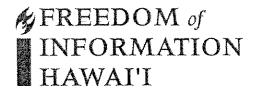
In analyzing results of this first Hawai'i FOI Audit, it should be noted that audit volunteers were trained and may have been more persistent in pursuing records requests than ordinary citizens. Also, project staff provided advice and assistance to volunteers that would not normally be available to citizens. In 49 of the 59 requests for records, audit volunteers visited the government agencies in person, at least on their first contact with the agency.

Mahalo to the following members of the League of Women Voters who helped recruit volunteers on their island: Joshua Cooper, Maui; Sue Irvine, Big Island; Carol Bain, Kaua'i; and Jean Aoki on O'ahu. FOI Audit sponsors also wish to thank Senator Les Ihara, Jr. and his staff for their invaluable support of this project.



## **GOVERNMENT RECORDS IN 2006 HAWAI'I FOI AUDIT**

- 1. Travel expenses for the governor, senate president, house speaker, chief justice, two mayors, and all county council chairs
- 2. Personnel lists for offices in five state agencies, a county agency, as well as salary levels for house and senate permanent staff
- 3. Non-bid contracts issued recently by state and all county governments
- 4. Consultant contracts for three state agencies
- 5. Leases of office space and land by the state and counties of Honolulu, Kaua'i, and Hawai'i
- 6. Legal settlements for two state departments and two counties
- 7. Legal services for private attorneys contracted by the state and the counties of Honolulu, Kaua'i, and Hawai'i
- 8. Criminal information, including arrest logs for all counties, and sex offender registration data for two neighbor island counties
- 9. Restaurant inspection records from the state Department of Health offices on three islands
- 10. County building permits for properties on O'ahu and Kaua'i
- 11. Meeting minutes from all county councils, a state board, and two county boards



## SAMPLING OF FOI AUDIT REQUESTS

- 1. Requester was asked to fill out OIP form to receive governor's travel expenses because it was the state's rules. Requester was told it was office procedure to sign name in a log to before seeing senate president's travel expenses.
- 2. House speaker's travel expenses contained his un-redacted social security number.
- Staff repeatedly asked requester to submit written request stating who requester
  worked for and why she wanted the list of legal services contracts. Requester
  was asked several times for name and purpose of wanting personnel list;
  without asking requester's email capability, staff told requester to make request
  by email.
- 4. Agency staff instructed requester to go to Office of Information Practices for list of state-contracted private attorneys; requester repeated original FOI request and another staff person instructed requester fill out OIP form; on another day, requester was offered copy of records for \$5.30 fee or to get information online.
- 5. Requester used alias on OIP form requesting a copy of a restaurant inspection; staff said name was required but requester declined to provide; staff said deputy AG opinion will be sought and refused to identify himself to requester, saying he would not give his name since requester also refused; subsequently supervisor accommodated the request.
- 6. County attorney solicited OIP opinion on redacting signatures on legal settlements, indicating that OIP said signatures may not be redacted prior to disclosure; county attorney asked requester to voluntarily redact signatures before posting on internet.
- 7. Honolulu police arrest log available on counter and copies provided at 25¢ per page; Kaua'i police allowed review of arrest log and copies at 50¢ per page, plus search charge, but Maui and Hawai'i police declined requests for hardcopy arrest logs though reviewed by requesters.
- 8. Two requests for identical building permit made to same Kaua'i agency; one request received no response, while other was fulfilled after three attempts and testy exchange with staff over privacy issue.

- 9. From a book, staff read information on Maui mayor trip to requester, but declined to provide copy of requested travel expenses.
- 10. Requester twice was asked her name and reason for requesting information on Honolulu mayor trip; reason was given but no response received after another follow-up. Requester asked twice to narrow request for Honolulu non-bid contracts; referred to another staff and left two messages but no return calls received. UH requires written request for legal settlements; two written requests faxed to UH counsel general office but no response has been received.
- 11. Request not fulfilled because staff said there were no Maui non-bid contracts in last six months, only single source purchases. Requester told that Hawai'i county land leases are conveyance documents and are available on Oahu, not on Big Island.
- 12. After 5 agency contacts, request was refused by county agency claiming requester owed \$2,000 for previous access fees disputed in pending lawsuit.
- 13. Hawai'i corporation counsel provided names of two private-contract county attorneys as requested and informed requester that requests to individual departments would be needed to get names of other private county attorneys.
- 14. Phone request made for Honolulu legal settlements with staff asking for requester's name; on phone follow-up a week later requester told that a written request was required.
- 15. Land leases requested; staff provides tenant contact list but requester says she wants land leases; same request is resubmitted, but staff says the request was fulfilled.
- 16. Staff declined request for DOE Kona office personnel list; staff asked why requester wanted the information and requester declined to give reason; staff said she didn't want requester to know her name; requester asked staff to give supervisor a note; as requester leaves office parking lot, another woman office worker chased requester's car shouting "you sure aren't getting my name either; just remember that".

#1	Number Requests by Government Jurisdiction						
1	State	Honolulu	Kauai	Maui	Hawaii	Hilo/Kona	
Total # 59 Requests	25	8	13	5	8	6/2	
		Numb					
	Total	Honolulu	Kauai	Maui	Hawaii	Hilo/Kona	
# Volunteers	33	14	8	6	5	3/2	

#2	Number of Agency Contacts					
	1	2	3			
Number of Contacts for 59 All FOI Requests	24	15	20			
FOI Requests Submitted 59	34	17	8			
FOI Requests Fulfilled 43	17	11	15			
FOI Requests Not Fulfilled 14	6	5	3			
Request to view fulfilled, 2 copy request denied	1	1	0			

#3	Questions Asked of Requestors					
	Identity of Requestor	Reason for Request	Requester's Affiliation			
Total Audit Requests 59	39	19	6			
FOI Requests Fulfilled 43	29	16	6			
FOI Requests Not Fulfilled 14	8	3	0			
Request to view fulfilled, 2 copy request denied	0	1	0			

#4		Requests			Question Asked of Requester						
		Ļ	þ	þ	Į.	n for	tion	visor	Number Agency Contacts		
	Type of Record	Total Number	Fulfilled	Not Fulfilled	Identity	Reason for Request	Affiliation	Supervisor Called	1	2	3+
1.	Travel Expenses	10	7	3	7	5	1	6	4	1	5
2.	Personnel	8	7	1	7	7	0	5	6	1	1
3.	Non-Bid Contracts	5	3	2	2	1	1	4	1	1	3
4.	Consultant Contracts	3	3	0	2	0	0	1	0	3	0
5.	Leases	5	2	3	3	<b>.</b> 1	1	2	1	2	2
6.	Legal Settlements	4	2	2	4	0	1	1	0	1	3
7.	Legal Services		3	1	3	1	1	4	0	2	2
8.	Criminal Data	_ /	5	0	1	1	0	2	3	3	1
9.	Restaurant Inspections		3	0	3	1	0	2	1	1	1
10.	Building Permits		2	1	3	1	1	1	2	0	1
11.	Meeting Minutes		6	1	2	1	0	4	6	0	1
	Totals	59	43	14	37	19	6	32	24	15	20